

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION - ST. LOUIS
BEFORE THE HONORABLE HENRY E. AUTREY
DISTRICT JUDGE

BUSEY BANK,)
)
 Plaintiff,) vs.) 4:20-CV-01473-HEA
)
 BENJA INCORPORATED, ET AL.,)
)
 Defendants.)

EMERGENCY MOTION FOR EXPEDITED HEARING
ON MOTION FOR APPOINTMENT OF GENERAL RECEIVER
OCTOBER 15TH, 2020

APPEARANCES

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EMERGENCY MOTION FOR EXPEDITED HEARING
ON MOTION FOR APPOINTMENT OF GENERAL RECEIVER

ZOOM VIDEOCONFERENCE PROCEEDINGS

COMMENCED AT 10:32 A.M.

THE COURT: This is the matter of Busey Bank vs. Benja
incorporated and Andrew J. Chapin. The matter is before the
court at this time for purposes of proceeding on an Emergency
Motion for Expedited Hearing on Verified Expedited Motion for
Appointment of General Receiver, Case Number 4:20-CV-01473. The
parties are present through Counsel.

Noting for the record that the Court also received, moments ago, a suggestion of Bankruptcy and Notice of Automatic Stay in the matter of Busey Bank vs. Benja Incorporated, et al., document number 11, filed this morning sometime early.

Are the parties ready to proceed? Not that -- at this point I don't know if there is much that we can proceed on, but that being said, are we ready to go?

MR. CAMPBELL: We are, Your Honor.

THE COURT: All right. Well, I guess the simple question right now is, in light of the suggestions of Bankruptcy and Notice of Automatic Stay, really, what is it that there is for us to do at this time?

MR. CAMPBELL: Well, Judge, I'm Michael Campbell with Polsinelli, on behalf of Busey Bank. My partner, Jay Switzer,

1 is on with us. And of course Ryan Mason, who is also on,
2 represents the Defendants.

3 THE COURT: Yes.

4 MR. CAMPBELL: There may still be one matter we would
5 like you to address and it has to do with the potential for
6 spoliation of evidence that has to do with Andrew Chapin.

7 Although the Bankruptcy was filed, the Bankruptcy stays
8 any action with regard to Benja Incorporated --

9 THE COURT: Uh-huh.

10 MR. CAMPBELL: -- but it doesn't stay any actions by
11 this Court with respect to Andrew Chapin. And as you will see
12 in the Emergency Motion for an Expedited Hearing on the Motion
13 for Relief from -- I'm sorry -- Motion for Appointment of
14 Receiver, you will see that we have set forth for you the facts
15 concerning the Google accounts, email accounts, that Mr. Chapin
16 used with respect to Benja.

17 And we think that those accounts are fairly important
18 because Mr. Chapin developed or set up fake accounts --

19 THE COURT: Uh-huh.

20 MR. CAMPBELL: -- in the name of people who, in this
21 very small company, who were working for him and used that
22 information to provide information to investors that was false.
23 And our goal is to at least preserve those Google accounts to
24 the extent that it's possible.

25 We understand -- and let me give you a very brief

1 background. As we understand it, Benja Incorporated is a very
2 small e-commerce company that had only several employees.
3 Andrew Chapin started the company and he had help from a man by
4 the name of Tom Goode, it's spelled G-o-o-d-e, but Mr. Goode had
5 handled the technical side of the equation, drafting code for
6 the software, and Mr. Chapin was the entrepreneurial salesman.
7 And Mr. Chapin solicited a number of investors with this
8 company, which actually started as a crypto-currency company,
9 and they issued Benja coins in the crypto-currency world.

10 But that changed to this e-commerce platform where
11 Benja would provide a service to various companies like Nike and
12 New Balance and otherwise, allegedly, in which they were to pay
13 the Benja money for this advertising app that would hover over
14 other pages like magazines, on-line magazines and things that
15 readers would look at, and then they would see an advertisement
16 and they could buy a pair of shoes from Nike.

17 All of that sounded great but what we understand later
18 on, from Joe Alouf -- and you have his affidavit -- is that the
19 entire concept more or less failed with filtering software that
20 had to do with advertisements.

21 That's neither here nor there. Here's what's
22 important. Mr. Chapin solicited a number of investors for the
23 company who did invest millions of dollars in this company.
24 Some of the investors who were also directors became very
25 concerned about how the company was being operated and what was

1 happening with the money, and they asked Mr. Chapin to hire an
2 outside financial consultant. And in May of this year he hired
3 Joe Alouf, who has more than 30 years of experience in financial
4 consulting for some major corporations around the country.

5 And Joe Alouf came into the company and he received
6 very little cooperation from Mr. Chapin. He was originally
7 brought in to look at a \$1 million dollar loan that was going to
8 be made from a company called Empowerment, run by Michael Stern,
9 and he was to provide some financial advice with regard to it
10 but he wasn't given information to do so.

11 Several weeks passed and nothing happened. And then
12 finally Mr. Alouf was contacted again and was asked to do a few
13 more things. He was actually contacted by Michael Stern at
14 Empowerment, who said, who basically said, Well, we've made the
15 \$1 million dollar loan, which was news to Mr. Alouf, and they
16 started comparing notes.

17 And they found out that Mr. Stern had been provided
18 with bank statements for Benja that were bank statements at
19 Busey Bank for the operating account of Benja, and these bank
20 statements had been digitally altered and were fraudulent. They
21 showed \$1.2 million dollars, on August 31 of this year, of a
22 bank balance. They showed what is essentially millions of
23 dollars in accounts receivable coming from large companies like
24 Nike that were allegedly deposited to that bank account.

25 And when Mr. Alouf, who by that time had become, been

1 appointed the Interim CFO of the company, was still not getting
2 enough cooperation but getting, exploring from outside sources,
3 he contacted Busey Bank and he obtained the actual bank
4 statements, which showed that on August 31 the bank balance was
5 only \$1,900, not \$1.2 million dollars, and that there were no
6 deposits of accounts receivable because there were no accounts
7 receivable that were coming in. No such payments.

8 These were fraudulent bank statements that were
9 provided to outside investors, including Empowerment and Michael
10 Stern, to lure more investors, which by the way were more loans
11 that were a violation of Benja and Mr. Chapin's Loan Agreement
12 with Busey Bank, our client.

13 Our client has \$5 million dollars outstanding in loans
14 or a loan to Benja, and it is secured by, guaranteed and signed
15 by Mr. Chapin. That loan is dependent on accounts receivable as
16 its collateral. And from what Joe Alouf, from the inside of
17 this company, has basically said, as more or less a
18 whistleblower, as you will see in his affidavit that was on file
19 in the state court action, which is before you, he has
20 essentially said, There are no accounts receivable and this is
21 all simply a fraud.

22 There are other frauds that have been committed and
23 we've outlined them in both the -- I should say Joe Alouf
24 outlines them in the affidavit. We outlined a series of them in
25 the Emergency Motion that we filed with this Court yesterday.

1 THE COURT: Uh-huh.

2 MR. CAMPBELL: There were financial statements, for
3 instance, that were presented to our client, Busey Bank, by
4 Mr. Chapin and those financial statements purported to show
5 million of dollars of accounts receivable, again from companies
6 like Nike, New Balance, Columbia and others, and in fact those
7 financial statements -- I'm sorry -- those accounts receivable
8 did not exist. The financial statements included what purported
9 to be an Accounts Receivable Verification from an outside
10 third-party firm and from what we now see, that was also forged
11 by Mr. Chapin.

12 It goes even further, Judge, because we learned only
13 two days ago that Mr. Chapin actually impersonated Jennifer
14 Byrne at Armstrong Teasdale and issued the Shareholders
15 Agreement to other investors in the company and that he had no
16 authority, of course, to do so.

17 We think that he is the one, or he had somebody draft
18 that Shareholders Agreement and he sent it out under Jennifer's
19 name, purporting to be a DocuSign email, with a fake email
20 address that was copied in that DocuSign to
21 JByrne@ArmstrongTeasdalemail.com, which is a domain that does
22 not exist. Her correct email address we've put forth in that
23 Emergency Motion for Armstrong Teasdale.

24 Jennifer Byrne was contacted by one of the former
25 directors of the company, who is also an investor, a man by the

1 name of Scott Sklar, who has been very concerned about the
2 company and his investment, trying to get to the bottom of it.

3 And in late September he contacted Jennifer Byrne and
4 he asked her about the forged agreement and the documents and
5 representation of Benja, and she said, We at Armstrong Teasdale
6 do not represent Benja. We never have. We've not communicated
7 with Mr. Chapin, and we are very concerned about this,
8 essentially the fraudulent use of her name.

9 There are more things that are frauds that we've
10 outlined, Judge, for you. I'll keep it short, but Borrowing
11 Base Certificates were provided to our client in connection with
12 the loan attesting to an outside accounts receivable, and in
13 fact they don't exist. So all of these were fraudulently
14 presented to our client.

15 One more thing that is a significant concern of ours
16 but it will be addressed, we are sure, by the Bankruptcy Court,
17 is that Mr. Chapin transferred hundreds of thousands of dollars
18 from the Busey Bank account to JPMorgan Chase. And there were
19 multiple accounts, we understand, at JPMorgan Chase, at least
20 one in the name of Benja and another one in his own personal
21 name, in which he would take money from Busey Bank, he would
22 transfer it over to Chase, to the Benja account at Chase, and
23 then he would transfer it from the Benja account at Chase to his
24 own personal account.

25 And he actually told Joe Alouf the reason why he did

1 that was because it would have taken two signatures for him to
2 use the JPMorgan account in the name of Benja to make direct
3 payments to other people, whereas it did not require that in his
4 own account.

5 We also learned, Judge, that one of the early
6 investors, who we understand invested only about \$300,000,
7 between \$200,000 and \$400,000, actually threatened criminal
8 action against, we are sure against Mr. Chapin but definitely
9 against a woman by the name of Jennifer Lee who Mr. Chapin hired
10 as more or less a bookkeeper, but he represented her to be a CFO
11 in the company and we again know that he created fake email
12 accounts in her name.

13 But this director essentially came back to -- and this
14 director's name was Bret Brueck, B-r-u-e-c-k. You will see that
15 name in Mr. Sklar's affidavit. But Mr. Brueck, who invested
16 only a few hundred thousand dollars, essentially demanded that
17 he receive what he claims was promised to him out of this
18 company, and he received a total of \$4.6 million dollars, is
19 what he told Joe Alouf that he received. And we have verified a
20 lot of that came out of the Busey Bank account for that
21 \$4.6 million dollars.

22 Judge, whenever you see an investor who comes into an
23 investment, they invest only \$300,000 and they get \$4.6 million
24 dollars after threatening criminal action, that's a Ponzi
25 scheme. And what Mr. Chapin is doing is he's operating and has

1 been operating a Ponzi scheme for the purpose of essentially
2 keeping this thing afloat, whether or not this e-commerce
3 platform is viable or not, but for the purpose of paying off
4 prior investors using new money.

5 And the way you get new money is you, in his case,
6 fabricate and fraudulently alter bank statements to make it look
7 as though you have accounts receivable, you give that to new
8 investors such as Michael Stern at Empowerment, who loaned a
9 million dollars to the company last month, and you convince them
10 to loan more money to the company to keep it afloat. That is
11 what he has done.

12 I could go into other things that we don't need to
13 bother you with, such as the fact that Mr. Chapin resigned as
14 the CEO and resigned as a Director, and then a day later he
15 purported to step back in or try to step back in when he didn't
16 have the authority to do so. So those questions are swirling
17 and they will be, I'm sure, answered by the Bankruptcy Court in
18 short order.

19 THE COURT: Uh-huh.

20 MR. CAMPBELL: Here is what we're concerned about, and
21 that is that Brian Buster, the attorney for Tom Goode, who was
22 one of the original founders or originally in Benja -- Tom
23 Goode, by the way, signed a Guaranty for our client's loan, or
24 I'm sorry, our clients were given a Guaranty. Tom Goode says he
25 did not sign it. That his name was forged by Mr. Chapin. We

1 don't know if that's true or not, and at this point we don't
2 need to decide that.

3 What we do know is that his attorney, Brian Buster,
4 told us Google -- Mr. Chapin has deleted the email accounts for
5 Benja and the individual email accounts used by individuals such
6 as himself, and the fake ones he had created, and that Google's
7 policy and Google's practice will allow those deleted email
8 accounts to be unrecoverable after October 18, which is
9 essentially this Sunday.

10 If it's possible, Judge, what we would like the Court
11 to do, whether sui sponte or in connection with our motion just
12 as to Andrew Chapin, is to at least issue an order directing
13 Mr. Chapin not to spoliate evidence and not to allow Google to
14 delete the email accounts. We don't think that there will be
15 enough time in the next one day for the Bankruptcy Court to do
16 that in this context, and we think it's rather important that
17 those, that that small amount of evidence be retained.

18 Now, Judge, we are not going to try to tear up your
19 docket in the next few weeks and make this a long, drawn-out
20 process. What we're more concerned about is this one hanging
21 issue of the Google email account today that we think needs, at
22 least needs some attention.

23 My partner, Jay Switzer, is on the phone, of course.
24 He may be able to address a little more of this. And Jay, if
25 there is anything else you think you need to add for the Judge.

1 MR. SWITZER: I think that Michael has covered --
2 again, Jay Switzer from the Chicago office of Polsinelli.

3 The issue regarding G-Suite software and the Google
4 accounts has been front and center for everybody from Tom Goode,
5 through his counsel Brian Buster, and Joe Alouf has raised it,
6 as well. You know, we were making preliminary steps to be able
7 to contact Google once a Receiver was appointed to make sure
8 that these emails and other documents are not irretrievably
9 lost.

10 And so I think it would be a prudent order, and I would
11 hope that counsel for Mr. Chapin would agree, that any efforts
12 to further destroy emails or actions that should be taken now to
13 preserve evidence, that that should be ordered by this Court.

14 And so we would certainly make that limited request as
15 part of an order to be entered today.

16 THE COURT: Okay.

17 MR. CAMPBELL: You do have control over Andrew Chapin
18 still, Judge, and that's the reason why --

19 THE COURT: Right.

20 MR. CAMPBELL: -- we would make that request. So
21 that's our sole request today.

22 And I apologize for giving you all the background
23 behind the company, but you need to understand I've given you
24 only the tip of the iceberg of all of the fraudulent activity,
25 and how this is really just a shell of a Ponzi scheme, as we are

1 seeing, as Joe Alouf has concluded, and as other former
2 directors are now concluding as they investigate all of this.

3 So that's the limited piece of an order that we're
4 asking the Court to at least enter.

5 THE COURT: All right. Anything else?

6 MR. CAMPBELL: That is it for the moment, Judge.

7 THE COURT: All right.

8 MR. MASON: Your Honor, Ryan Mason for the Defendant.

9 THE COURT: Yes. Go ahead, Mr. Mason.

10 MR. MASON: Can you hear me all right, Your Honor?

11 THE COURT: I hear you just fine, yes, sir.

12 MR. MASON: Great. Thank you.

13 You'd be forgiven if you didn't catch all of that.
14 There was a lot in there, to be sure. If you had a chance to
15 read the original Petition, this is a suit on a note in Count
16 One, a suit on a Guaranty in Count Two, and a suit for a
17 Receiver in Count Three.

18 We are here today on the suit on Count Three for the
19 appointment of a Receiver. The company that they want to put a
20 Receiver in for is in Bankruptcy as of this morning. The Stay
21 that's in place, that's what's before the Court right now. And
22 I think anything beyond that is a violation of the Stay and,
23 frankly, I can't believe this conversation went as broad as it
24 did. And as to the narrow ask, that was not before the Court
25 with respect to the Google email account.

1 Put aside for a minute that both of my clients, they
2 will have their opportunity to refute all of these allegations,
3 which they intend to do strenuously in the correct forum. So
4 I don't think that there is anything for the Court to do.

5 Count Two is Mr. Chapin's Guaranty. Mr. Campbell and
6 Mr. Switzer can proceed against that Guaranty in Count Two in
7 the coming weeks and months, you know. He is not going to be
8 subject to the Stay. But there is not anything before the Court
9 today in the nature of a TRO or anything like that.

10 THE COURT: Any response?

11 MR. CAMPBELL: Yes, Your Honor.

12 I would submit that the Court does have plenary
13 jurisdiction over discovery matters, and that when it comes to
14 the attention that there is a rather clear instance of
15 spoliation of evidence -- in this case we're convinced that
16 Mr. Chapin has deleted the Google email accounts because he's
17 probably concerned about his non-civil issues as well as this
18 civil case. In that instance, Judge, the Court does have
19 plenary jurisdiction to, if nothing else, at least issue a
20 cautionary order that directs Mr. Chapin not to allow evidence
21 to be destroyed.

22 And the evidence in this case, Google email accounts
23 are a very critical piece of evidence with respect to not just
24 Benja, which we are not arguing today, but with respect to
25 Andrew Chapin himself. And that is our concern here, Judge.

1 So, Judge, all we can do is ask. And if you decide
2 that you do not want to exercise your plenary jurisdiction, we
3 understand. But we are asking you to at least do that much, and
4 if you will do so, that we would appreciate it.

5 That's it, Judge.

6 THE COURT: All right. Well, clearly, as everybody
7 agrees, the essence and the heart of the purpose for us being
8 here today was related to the Motion for Emergency Relief which
9 has been, well, obviated by the filing of Bankruptcy by Benja
10 Incorporated.

11 There is nothing in any of the pleadings relative to
12 this motion hearing today that relate to the relief that you ask
13 for, which I think is a really broad swipe beyond and outside of
14 the pleadings. So with respect to that request for that, even
15 as you indicated, limited relief, Counsel, I'm going to deny
16 that at this time. Okay? All right.

17 MR. CAMPBELL: Understood, Judge. Thank you.

18 THE COURT: All right. Anything else, Counsel?

19 MR. CAMPBELL: Nothing for us, Judge. If we don't ask,
20 we don't get. You know that.

21 THE COURT: That's true. That's what I've been
22 preaching my whole life.

23 MR. MASON: Your Honor --

24 THE COURT: Yes.

25 MR. MASON: Your Honor, I have one procedural question.

1 Was this matter on the record?

2 THE COURT: Yes, it was.

3 MR. MASON: Okay. And is there a way to get a
4 transcript?

5 THE COURT: For a small fee. That's a judge joke.

6 Yeah.

7 MR. MASON: That's fair. That's fair. Do we have time
8 to contact your clerk to make that happen?

9 THE COURT: Yeah. Do that.

10 MR. MASON: Thank you, Your Honor.

11 MR. CAMPBELL: Again, Judge, I'm sure the record
12 reflects it but I'm going to repeat it, that we are not today,
13 we did not proceed on the motion, our motion against Benja in
14 any way, shape or form.

15 We do not intend to go after or proceed against any
16 collateral of Benja. That is not our intent in asking for the
17 exercise of plenary jurisdiction over discovery having to do
18 with Andrew Chapin, only, which was solely our request.

19 THE COURT: Correct. All right.

20 MR. CAMPBELL: So I just want to be sure the record is
21 clear on that.

22 THE COURT: I believe it is. All right. Thank you all
23 very much.

24 MR. CAMPBELL: Thank you.

25 THE COURT: Stay well.

1 MR. SWITZER: Thank you.

2 - RECESS AT 11:00 A.M. -

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October 15th, 2020 - Emergency Motion Hearing

REPORTER'S CERTIFICATE

I, Linda C. Nichols, Registered Diplomate Reporter and Certified Realtime Reporter, do hereby certify that I am a duly appointed Official Court Reporter for the United States District Court of the Eastern District of Missouri, and that the foregoing is a true and accurate reproduction of proceedings had in the matter of:

BUSEY BANK vs. BENJA INCORPORATED, ET AL.

No. 4:20-CV-01473-HEA

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Dated this 22nd day of October, 2020.

\s\ Linda Nichols
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